IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT

OurPet's Company, 1300 East Street Fairport Harbor, Ohio 44077 Plaintiff v. Loving Pets, Corp., 110 Melrich Road, Suite 1 Cranbury, NJ 08512	Case No. 1:15-cv-768 Judge Polster Magistrate Vecchiarelli **ANSWER & COUNTERCLAIMS**

DEFENDANT LOVING PETS, INC.'S ANSWER, DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Defendant, Loving Pets, Corp. ("Loving Pets"), by its undersigned counsel, for its answer to the First Amended Complaint for Patent Infringement ("the First Amended Complaint") of Plaintiff OurPet's Company ("OurPet's"), states as follows:

THE PARTIES

1. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 1 of the First Amended Complaint, and therefore denies all of the allegations.

2. Loving Pets admits that it is a business entity located in New Jersey. Loving Pets denies all of the remaining allegations set forth in Paragraph 2 of the First Amended Complaint.

JURISDICTION AND VENUE

3. The allegations set forth in Paragraph 3 of the First Amended Complaint constitute conclusions of law to which no response is required.

4. The allegations set forth in Paragraph 4 of the First Amended Complaint constitute conclusions of law to which no response is required.

5. The allegations set forth in Paragraph 5 of the First Amended Complaint constitute conclusions of law to which no response is required.

6. Loving Pets admits that it transacts business in the state of Ohio. Loving Pets denies that it supplies infringing pet bowls that are widely sold throughout the state at various big-box retailers. The remaining allegations set forth in Paragraph 6 of the First Amended Complaint constitute conclusions of law to which no response is required.

7. Loving Pets admits that it supplies goods in the state of Ohio. Loving Pets denies that it supplies infringing pet bowls that are widely sold throughout the state at various big-box retailers. The remaining allegations set forth in Paragraph 7 of the First Amended Complaint constitute conclusions of law to which no response is required.

8. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations that the Plaintiff, its witnesses and evidence are located within this District, and therefore denies all of these allegations. Loving Pets denies that any infringement on its part has occurred within this judicial district. The remaining allegations set forth in Paragraph 8 of the First Amended Complaint constitute conclusions of law to which no response is required.

9. Loving Pets admits that it maintains a web site that permits users located in Ohio and elsewhere to store account information; register; access customer service; and order product for shipment to Ohio.

10. The allegations set forth in Paragraph 10 of the First Amended Complaint

constitute conclusions of law to which no response is required.

11. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 11 of the First Amended Complaint, and therefore denies all of the allegations.

12. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 12 of the First Amended Complaint, and therefore denies all of the allegations.

13. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 13 of the First Amended Complaint, and therefore denies all of the allegations.

14. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 14 of the First Amended Complaint, and therefore denies all of the allegations.

15. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 15 of the First Amended Complaint, and therefore denies all of the allegations.

16. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 16 of the First Amended Complaint, and therefore denies all of the allegations.

17. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 17 of the First Amended Complaint, and therefore denies all of the allegations.

18. Loving Pets lacks sufficient information to determine the truth or falsity of the

allegations set forth in Paragraph 18 of the First Amended Complaint, and therefore denies all of the allegations.

19. Loving Pets admits that U.S. Patent No. 8,286,589 ("the '589 patent") on its face is titled "Covered Bowls Such as Pet Food and Water Bowls;" on its face indicates an issue date of October 16, 2012; and on its face names Steven Tsengas as an inventor. Loving Pets denies that the '589 patent was duly and legally issued.

20. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 20 of the First Amended Complaint, and therefore denies all of the allegations.

21. To the extent Paragraph 21 of the First Amended Complaint refers to or describes content of Exhibit 1 to the First Amended Complaint, Exhibit 1 speaks for itself. Loving Pets denies all of the remaining allegations set forth in Paragraph 21 of the First Amended Complaint.

22. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 22 of the First Amended Complaint, and therefore denies all of the allegations.

23. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 23 of the First Amended Complaint, and therefore denies all of the allegations.

24. Loving Pets admits that it has had actual knowledge that OurPet's claims intellectual property rights in its Durapet product line by virtue of the marking of its products as patented and/or patent pending.

25. Loving Pets admits that it manufactures, sources, markets, and/or sells pet bowls in the pet industry. Loving Pets lacks sufficient information to determine the truth or falsity of

the remaining allegations set forth in Paragraph 25 of the First Amended Complaint, and therefore denies all of the remaining allegations.

26. Loving Pets denies all of the allegations set forth in Paragraph 26 of the First Amended Complaint.

27. Loving Pets admits that U.S. Patent No. 8,973,529 ("the '529 patent") on its face is titled "Covered Bowls Such as Pet Food and Water Bowls;" on its face indicates an issue date of March 10, 2015; and on its face names Steven Tsengas as an inventor. Loving Pets denies that the '529 patent was duly and legally issued.

28. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 28 of the First Amended Complaint, and therefore denies all of the allegations.

29. To the extent Paragraph 29 of the First Amended Complaint refers to or describes content of Exhibit 2 of the First Amended Complaint, Exhibit 2 speaks for itself. Loving Pets denies all of the remaining allegations set forth in Paragraph 29 of the First Amended Complaint.

30. Loving Pets denies all of the allegations set forth in Paragraph 30 of the First Amended Complaint.

31. Loving Pets denies all of the allegations set forth in Paragraph 31 of the First Amended Complaint.

32. Loving Pets denies all of the allegations set forth in Paragraph 32 of the First Amended Complaint.

33. To the extent Paragraph 33 of the First Amended Complaint alleges that Loving Pets requires authorization from Plaintiff to sell any Loving Pets product and/or to use any patent allegedly owned by Plaintiff, Loving Pets denies these allegations. To the extent Paragraph 33

of the First Amended Complaint alleges that Loving Pets infringes any patent allegedly owned by Plaintiff through the sale of any Loving Pets product, Loving Pets denies these allegations. Loving Pets denies any remaining allegations set forth in Paragraph 33 of the First Amended Complaint.

34. Loving Pets denies all of the allegations set forth in Paragraph 34 of the First Amended Complaint.

CLAIM NO. 1
(*Patent Infringement 35 U.S.C. § 271 et seq.*)

35. Loving Pets refers to and incorporates herein by reference all defenses and all response to allegations stated above as if fully set forth herein.

36. Loving Pets denies all of the allegations set forth in Paragraph 36 of the First Amended Complaint.

37. Loving Pets admits that it sells its "Ruff-N-Tuff" product in various sizes. Loving Pets denies all of the remaining allegations set forth in Paragraph 37 of the First Amended Complaint.

38. Loving Pets denies all of the allegations set forth in Paragraph 38 of the First Amended Complaint.

39. Loving Pets denies all of the allegations set forth in Paragraph 39 of the First Amended Complaint.

40. Loving Pets denies all of the allegations set forth in Paragraph 40 of the First Amended Complaint.

41. Loving Pets denies all of the allegations set forth in Paragraph 41 of the First Amended Complaint.

42. Loving Pets denies all of the allegations set forth in Paragraph 42 of the First

Amended Complaint.

CLAIM NO. 2
(*Patent Infringement 35 U.S.C. § 271 et seq*.)

43. Loving Pets refers to and incorporates herein by reference all defenses and all response to allegations stated above as if fully set forth herein.

44. Loving Pets denies all of the allegations set forth in Paragraph 44 of the First Amended Complaint.

45. Loving Pets admits that it sells its "Ruff-N-Tuff" product in various sizes. Loving Pets denies all of the remaining allegations set forth in Paragraph 45 of the First Amended Complaint.

46. Loving Pets denies all of the allegations set forth in Paragraph 46 of the First Amended Complaint.

47. Loving Pets denies all of the allegations set forth in Paragraph 47 of the First Amended Complaint.

48. Loving Pets denies all of the allegations set forth in Paragraph 48 of the First Amended Complaint.

49. Loving Pets denies all of the allegations set forth in Paragraph 49 of the First Amended Complaint.

50. Loving Pets denies all of the allegations set forth in Paragraph 50 of the First Amended Complaint.

GENERAL DENIAL

Except as expressly admitted herein, Loving Pets denies each and every allegation contained in Plaintiff's First Amended Complaint.

DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), and without assuming any burden that it would not otherwise bear, and reserving its right to assert additional defenses, Loving Pets asserts the following defenses to Plaintiff's First Amended Complaint:

FIRST DEFENSE
(Failure to State a Claim)

A. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted against Loving Pets.

SECOND DEFENSE
(Non-infringement)

B. Loving Pets has not infringed and does not infringe the '589 Patent, either directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents.

C. Loving Pets has not infringed and does not infringe the '529 Patent, either directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents.

THIRD DEFENSE
(Invalidity)

D. On information and belief, the '589 Patent is invalid for failure to satisfy the conditions of patentability as specified under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, or 112.

E. On information and belief, the '529 Patent is invalid for failure to satisfy the conditions of patentability as specified under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, or 112.

FOURTH DEFENSE
(Prosecution History Estoppel)

F. Plaintiff is estopped by reason of prosecution history estoppel from asserting infringement of the ’589 Patent under the doctrine of equivalents.

G. Plaintiff is estopped by reason of prosecution history estoppel from asserting infringement of the ’529 Patent under the doctrine of equivalents.

FIFTH DEFENSE
(Adequate Remedy at Law)

H. Plaintiff is not entitled to injunctive relief because any alleged injury to the Plaintiff is not immediate and irreparable, and Plaintiff has an adequate remedy at law

SIXTH DEFENSE
(Limitations on Damages)

I. Plaintiff’s claims for damages, if any, against Loving Pets are statutorily limited by 35 U.S.C. § 287.

SEVENTH DEFENSE
(Costs Barred)

J. Plaintiff is barred from recovering costs in connection with this action under 35 U.S.C. § 288.

EIGHTH DEFENSE
(No Exceptional Case)

K. Plaintiff cannot prove that this is an exceptional case justifying an award of attorneys’ fees against Loving Pets pursuant to 35 U.S.C. § 285.

NINTH DEFENSE
(Venue)

L. In the interest of justice, and for the convenience of the parties and the witnesses, venue is more appropriate in one or more other districts where this action may have been brought.

TENTH DEFENSE

(Laches, Waiver, Estoppel)

M. The claims against Loving Pets are barred, in whole or in part, by the doctrines of laches, waiver, and/or estoppel.

ELEVENTH DEFENSE
(Patent Misuse)

N. The ‘589 patent and ‘529 patent are unenforceable on the basis of patent misuse.

O. Loving Pets reserves any and all rights to amend its Answer and Defenses to Plaintiff’s First Amended Complaint and to add additional defenses as they become apparent.

LOVING PETS' COUNTERCLAIMS

Defendant/Counterclaimant Loving Pets, Corp. ("Loving Pets") asserts the following counterclaims against Plaintiff/Counterdefendant OurPet's Company ("OurPet's"):

NATURE AND BASIS OF ACTION

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the United States Patent Act, 35 U.S.C. § 1 *et seq*. Loving Pets requests declarations: (i) that it does not infringe any valid, enforceable claim of U.S. Patent Nos. 8,286,589 (the "'589 Patent") and 8,973,529 (the "'529 Patent"); and (ii) that the '589 Patent and the '529 Patent are invalid.

THE PARTIES, JURISDICTION, AND VENUE

2. Loving Pets is a company organized under the laws of the state of New Jersey, having its principal place of business at 110 Melrich Road, Suite 1, Cranbury, New Jersey 08512.

3. On information and belief, OurPet's is a corporation organized under the laws of the State of Colorado, having its principal place of business at 1300 East Street, Fairport Harbor, Ohio 44077.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, and 1338(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This Court has personal jurisdiction over OurPet's by virtue of the fact that OurPet's has submitted to the jurisdiction of this Court by bringing this action.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b), although venue is more appropriate in one or more other districts where this action may

have been brought.

FACTUAL ALLEGATIONS

7. Upon information and belief, OurPet's purports to be the owner by assignment of the '589 Patent and the '529 Patent.

8. Loving Pets does not infringe directly or indirectly, by inducement or contributorily, or literally or under under the doctrine of equivalents, any valid, enforceable claim of the '589 Patent or the '529 Patent.

9. Upon information and belief, all claims of the '589 Patent and the '529 Patent are invalid for failure to meet the requirements of the Patent Act, 35 U.S.C. § 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

COUNTERCLAIM I
(Declaratory Judgment of Non-Infringement)

10. Loving Pets realleges and reincorporates the allegations of Paragraphs 1 through 9 of its Counterclaims as if set forth herein in full.

11. There is an actual and justiciable controversy between the parties concerning Loving Pets' non-infringement of the claims of the '589 Patent and the '529 Patent.

12. Loving Pets is entitled to a judicial declaration that it has not and does not infringe directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents, any valid, enforceable claim of the '589 Patent and the '529 Patent.

COUNTERCLAIM II
(Declaratory Judgment of Invalidity of the Patents-in-Suit)

13. Loving Pets realleges and reincorporates the allegations of Paragraphs 1 through 12 of its Counterclaims as if set forth herein in full.

14. There is an actual and justiciable controversy between the parties concerning the validity of the patents asserted against Loving Pets for failure to meet the requirements of the Patent Act, 35 U.S.C. § 1 et seq., including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

15. Loving Pets is entitled to a judicial declaration and order that all the claims of the ’589 Patent and the ’529 Patent are invalid.

DEMAND FOR JURY TRIAL

Loving Pets requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Loving Pets requests judgment in its favor and against OurPet’s as follows:

(i) OurPet’s recovers nothing and its First Amended Complaint be dismissed with prejudice;

(ii) The Court deny any injunctive relief in favor of OurPet’s and against Loving Pets;

(iii) The Court declare that Loving Pets has not and does not infringe directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents, any claim of the ’589 Patent and the ’529 Patent;

(iv) the Court declare and order that all the claims of the ’589 Patent and the ’529 Patent are invalid;

(v) The Court declare and order that the ’589 Patent and the ’529 Patent are unenforceable;

(vi) The Court find this case to be exceptional pursuant to 35 U.S.C. § 285 and award Loving Pets its reasonable attorneys’ fees in this action;

(vii) All costs be taxed against OurPet's; and

(viii) Loving Pets be granted such other and further relief as the Court deems just and proper.

STARK & STARK
A Professional Corporation

By: /s/ Scott I. Unger
SCOTT I. UNGER (0067383)